

## **Chapter 2**

### **Department of Natural Resources**

#### **Part 1**

#### **General Provisions**

##### **79-2-101 Title.**

This chapter is known as the "Department of Natural Resources."

Enacted by Chapter 344, 2009 General Session

##### **79-2-102 Definitions.**

As used in this chapter:

- (1) "Conservation officer" is as defined in Section 23-13-2.
- (2) "Species protection" means an action to protect a plant or animal species identified as:
  - (a) sensitive by the state; or
  - (b) threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.
- (3) "Volunteer" means a person who donates a service to the department or a division of the department without pay or other compensation.

Enacted by Chapter 344, 2009 General Session

#### **Part 2**

#### **Department Creation and Administration**

##### **79-2-201 Department of Natural Resources created.**

- (1) There is created the Department of Natural Resources.
- (2) The department comprises the following:
  - (a) Board of Water Resources, created in Section 73-10-1.5;
  - (b) Board of Oil, Gas, and Mining, created in Section 40-6-4;
  - (c) Board of Parks and Recreation, created in Section 79-4-301;
  - (d) Wildlife Board, created in Section 23-14-2;
  - (e) Board of the Utah Geological Survey, created in Section 79-3-301;
  - (f) Water Development Coordinating Council, created in Section 73-10c-3;
  - (g) Division of Water Rights, created in Section 73-2-1.1;
  - (h) Division of Water Resources, created in Section 73-10-18;
  - (i) Division of Forestry, Fire, and State Lands, created in Section 65A-1-4;
  - (j) Division of Oil, Gas, and Mining, created in Section 40-6-15;
  - (k) Division of Parks and Recreation, created in Section 79-4-201;
  - (l) Division of Wildlife Resources, created in Section 23-14-1;
  - (m) Division of Land Management, created in Section 79-6-102;
  - (n) Utah Geological Survey, created in Section 79-3-201;
  - (o) Heritage Trees Advisory Committee, created in Section 65A-8-306;
  - (p) Recreational Trails Advisory Council, authorized by Section 79-5-201;
  - (q) Boating Advisory Council, authorized by Section 73-18-3.5;

- (r) Wildlife Board Nominating Committee, created in Section 23-14-2.5; and
- (s) Wildlife Regional Advisory Councils, created in Section 23-14-2.6.

Amended by Chapter 317, 2016 General Session

**79-2-202 Executive director -- Appointment -- Removal -- Compensation -- Responsibilities.**

- (1)
  - (a) The chief administrative officer of the department is an executive director appointed by the governor with the consent of the Senate.
  - (b) The executive director may be removed at the will of the governor.
  - (c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (2) The executive director shall:
  - (a) administer and supervise the department and provide for coordination and cooperation among the boards, divisions, councils, and committees of the department;
  - (b) approve the budget of each board and division;
  - (c) participate in regulatory proceedings as appropriate for the functions and duties of the department;
  - (d) report at the end of each fiscal year to the governor on department, board, and division activities; and
  - (e) perform other duties as provided by statute.
- (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the executive director, may accept an executive or legislative provision that is enacted by the federal government, whereby the state may participate in the distribution, disbursement, or administration of a fund or service from the federal government for purposes consistent with the powers and duties of the department.
- (4)
  - (a) The executive director, in cooperation with the governmental entities having policymaking authority regarding natural resources, may engage in studies and comprehensive planning for the development and conservation of the state's natural resources.
  - (b) The executive director shall submit any plan to the governor for review and approval.

Renumbered and Amended by Chapter 344, 2009 General Session

**79-2-203 Policy board members.**

- (1) Members of a policy board within the department shall be appointed consistent with the following criteria:
  - (a) geographical distribution;
  - (b) expertise or personal experience with subject matter;
  - (c) diversity of opinion and political preference; and
  - (d) gender, cultural, and ethnic representation.
- (2) The governor may remove a member at any time for official misconduct, habitual or willful neglect of duty, or for other good and sufficient cause.
- (3) No member of the Legislature may serve as a member of a division policy board.
- (4)
  - (a) In addition to the disclosures required by Section 67-16-7, a board member shall disclose any conflict of interest to the board.

- (b) Notwithstanding Section 67-16-9, a board member with a substantial conflict may serve on the board if the member refrains from voting on a board action when the conflict involves:
  - (i) a direct financial interest in the subject under consideration; or
  - (ii) an entity or asset that could be substantially affected by the outcome of board action.

Renumbered and Amended by Chapter 344, 2009 General Session

**79-2-204 Division directors -- Appointment -- Removal -- Jurisdiction of executive director.**

- (1)
  - (a) The chief administrative officer of a division within the department is a director appointed by the executive director with the concurrence of the board having policy authority for the division.
  - (b) The director of a division may be removed from office by the executive director.
  - (c) The appointment and term of office of the state engineer, notwithstanding anything to the contrary contained in this section, shall be in accordance with Section 73-2-1.
- (2)
  - (a) The executive director has administrative jurisdiction over a division director for the purpose of implementing department policy as established by the division's board.
  - (b) The executive director may:
    - (i) consolidate personnel and service functions in the divisions to effectuate efficiency and economy in the operations of the department;
    - (ii) establish a departmental services division to perform service functions; and
    - (iii) employ law enforcement officers and special function officers within the department that have all of the powers of a conservation officer and law enforcement officer, with the exception of the power to serve civil process.

Renumbered and Amended by Chapter 344, 2009 General Session

**79-2-205 Procedures -- Adjudicative proceedings.**

Except as provided by Sections 40-10-13, 63G-4-102, and 73-2-25, a division, board, council, or committee referred to in Section 79-2-201 shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Renumbered and Amended by Chapter 344, 2009 General Session

### **Part 3**

### **Finances**

**79-2-301 Budget.**

- (1) The department shall prepare and submit to the governor, to be included in the budget to be submitted to the Legislature, a budget of the department's requirements for expenses in carrying out the provisions of law during the fiscal year next following the convening of the Legislature.
- (2) The director of each division shall prepare, with the advice of the division's policy board, a budget of expenses for the next fiscal year, which shall be submitted to the executive director to aid in the preparation of the departmental budget.

Renumbered and Amended by Chapter 344, 2009 General Session

**79-2-302 Fees.**

- (1) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department.
- (2) A fee described in Subsection (1) shall:
  - (a) be reasonable and fair; and
  - (b) reflect the cost of services provided.
- (3) The department shall submit a fee established under this section to the Legislature as part of the department's annual appropriations request.
- (4) The department may not charge or collect a fee established under this section without approval of the Legislature.

Enacted by Chapter 344, 2009 General Session

**79-2-303 Species Protection Account.**

- (1) There is created within the General Fund a restricted account known as the Species Protection Account.
- (2) The account shall consist of:
  - (a) revenue generated by the brine shrimp tax provided for in Title 59, Chapter 23, Brine Shrimp Royalty Act; and
  - (b) interest earned on money in the account.
- (3) Money in the account may be appropriated by the Legislature to:
  - (a) develop and implement species status assessments and species protection measures;
  - (b) obtain biological opinions of proposed species protection measures;
  - (c) conduct studies, investigations, and research into the effects of proposed species protection measures;
  - (d) verify species protection proposals that are not based on valid biological data;
  - (e) implement Great Salt Lake wetlands mitigation projects in connection with the western transportation corridor;
  - (f) pay for the state's voluntary contributions to the Utah Reclamation Mitigation and Conservation Account under the Central Utah Project Completion Act, Pub. L. No. 102-575, Titles II-VI, 106 Stat. 4605-4655; and
  - (g) pay for expenses of the State Tax Commission under Title 59, Chapter 23, Brine Shrimp Royalty Act.
- (4) The purposes specified in Subsections (3)(a) through (3)(d) may be accomplished by the state or, in an appropriation act, the Legislature may authorize the department to award grants to political subdivisions of the state to accomplish those purposes.
- (5) Money in the account may not be used to develop or implement a habitat conservation plan required under federal law unless the federal government pays for at least 1/3 of the habitat conservation plan costs.

Renumbered and Amended by Chapter 344, 2009 General Session

**Part 4**

## Miscellaneous

### **79-2-401 Volunteer workers authorized.**

- (1) The department and its divisions may use volunteer workers to supplement the salaried work force.
- (2) A volunteer may be reimbursed for expenses actually and necessarily incurred, including transportation, meals, lodging, uniforms, and other items as approved by the Division of Finance, in the amounts and in accordance with the rules of the Division of Finance.
- (3) A volunteer is considered an employee of the state for the purposes stated in Section 67-20-3.
- (4) A volunteer may not donate a service to the department or a division unless the work program in which the volunteer would serve has first been approved, in writing, by the executive director and the executive director of the Department of Human Resource Management.
- (5) Volunteer services shall comply with the rules adopted by the Department of Human Resource Management relating to the services that are not inconsistent with this section.

Renumbered and Amended by Chapter 344, 2009 General Session

### **79-2-402 Outdoor recreation facilities -- Participation in federal programs -- Comprehensive plan.**

- (1) The executive director may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, seek a federal grant or loan or participation in a federal program to plan and develop an outdoor recreation resource, including:
  - (a) acquiring land or water; or
  - (b) acquiring an interest in land or water.
- (2)
  - (a) The executive director, in cooperation with the state planning coordinator and the state agency or political subdivision responsible for planning, acquisition, and development of outdoor recreation resources, may prepare, maintain, and update a comprehensive plan for the outdoor recreation resources of the state.
  - (b) The executive director shall submit the plan and any plan amendment to the governor for the governor's review and approval.
- (3) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the executive director may:
  - (a) apply to a United States agency for participation in or the receipt of aid from a federal program regarding outdoor recreation;
  - (b) in cooperation with other state agencies, enter into a contract or agreement with the United States or a United States agency;
  - (c) keep financial and other records; and
  - (d) furnish necessary reports to the United States official or agency.
- (4) In connection with obtaining the benefits of an outdoor recreation program, the executive director shall coordinate the department's activities with and represent the interests of all state agencies and political subdivisions having an interest in the planning, development, and maintenance of the outdoor recreation resource or facility.
- (5) The department may act as the agent of the state or a political subdivision to receive and to disburse federal money in accordance with the comprehensive plan.
- (6) The executive director may not make a commitment or enter into an agreement as authorized by this section and neither shall the governor approve a commitment or agreement unless

sufficient funds are available to the department for meeting the state's share, if any, of project costs.

- (7) To the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to a program participated in by the state under this section, the areas and facilities shall be publicly maintained for outdoor recreation purposes.
- (8) The executive director may enter into and administer an agreement with the United States or a United States agency with the governor's approval for planning, acquisition, and development projects involving participating federal-aid funds on behalf of a political subdivision, if the political subdivision gives necessary assurance to the executive director that:
  - (a) the political subdivision has available sufficient funds to meet the political subdivision's share, if any, of the cost of the project; and
  - (b) the political subdivision will operate and maintain an acquired or developed area at the expense of the political subdivision for public outdoor recreation use.

Amended by Chapter 218, 2010 General Session

**79-2-403 Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.
- (2) The rules:
  - (a) shall establish procedures for determining the value of the real property;
  - (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates the real property's value; and
  - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section 61-2g-102.
- (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:
  - (a) that is under a contract or other written agreement before May 5, 2008; or
  - (b) with a value of less than \$100,000, as estimated by the state agency.

Amended by Chapter 289, 2011 General Session

**79-2-404 Contracting powers of department -- Health insurance coverage.**

- (1) For purposes of this section:
  - (a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:
    - (i) works at least 30 hours per calendar week; and
    - (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.
  - (b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
  - (c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
  - (d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.
- (2)

- (a) Except as provided in Subsection (3), this section applies a design or construction contract entered into by, or delegated to, the department or a division, board, or council of the department on or after July 1, 2009, and to a prime contractor or to a subcontractor in accordance with Subsection (2)(b).
- (b)
  - (i) A prime contractor is subject to this section if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract.
  - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (3) This section does not apply to contracts entered into by the department or a division, board, or council of the department if:
  - (a) the application of this section jeopardizes the receipt of federal funds;
  - (b) the contract or agreement is between:
    - (i) the department or a division, board, or council of the department; and
    - (ii)
      - (A) another agency of the state;
      - (B) the federal government;
      - (C) another state;
      - (D) an interstate agency;
      - (E) a political subdivision of this state; or
      - (F) a political subdivision of another state; or
  - (c) the contract or agreement is:
    - (i) for the purpose of disbursing grants or loans authorized by statute;
    - (ii) a sole source contract; or
    - (iii) an emergency procurement.
- (4)
  - (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).
  - (b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
- (5)
  - (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
  - (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall:
    - (i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependants during the duration of the subcontract; and
    - (ii) certify to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.
  - (c)
    - (i)
      - (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii)
  - (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
  - (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
- (6) The department shall adopt administrative rules:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) in coordination with:
    - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
    - (ii) a public transit district in accordance with Section 17B-2a-818.5;
    - (iii) the State Building Board in accordance with Section 63A-5-205;
    - (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
    - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
    - (vi) the Legislature's Administrative Rules Review Committee; and
  - (c) that establish:
    - (i) the requirements and procedures a contractor must follow to demonstrate compliance with this section to the department that shall include:
      - (A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
      - (B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
      - (C) that the actuarially equivalent determination required for qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;
    - (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
      - (A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
      - (B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
      - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
      - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and a dependent of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract; and
    - (iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(c), provided by the Department of Health, in accordance with Subsection 26-40-115(2).
- (7)
  - (a)



- (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.
- (ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
  - (A) the employer relied in good faith on a written statement of actuarial equivalency provided by:
    - (I) an actuary; or
    - (II) an underwriter who is responsible for developing the employer group's premium rates; or
  - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
- (b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
- (8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.
- (9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:
  - (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
  - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Amended by Chapter 20, 2016 General Session

Amended by Chapter 355, 2016 General Session

## **Part 5**

### **Sage Grouse Management and Protection**

#### **79-2-501 Title.**

This part is known as "Sage Grouse Management and Protection."

Enacted by Chapter 358, 2016 General Session

#### **79-2-502 Definitions.**

As used in this part:

- (1) "Compensatory mitigation" means avoiding, minimizing, rectifying, reducing, or eliminating impacts on sage grouse habitat by providing substitute sage grouse habitat through conservation projects or conservation banks.
- (2) "Conservation plan" means the current version of the "Conservation Plan for Greater Sage-grouse in Utah" developed by the state and approved by the governor.
- (3) "Permanently disturb" means an action that disrupts the common activities of sage grouse for a period of more than five years and includes all areas where the effects of the action could be expected to disrupt the common activities of sage grouse for a period of more than five years.
- (4) "Person" means:
  - (a) an individual;

- (b) a corporation;
  - (c) a limited liability company;
  - (d) a partnership;
  - (e) an association;
  - (f) a trust; or
  - (g) a voluntary organization.
- (5) "Program" means the Sage Grouse Compensatory Mitigation Program created under Section 79-2-504.
- (6) "Sage grouse" means the greater sage-grouse, or the species *centrocercus urophasianus*.

Enacted by Chapter 358, 2016 General Session

**79-2-503 Scope.**

Nothing in this part requires a person, whether public or private, to participate in the program.

Enacted by Chapter 358, 2016 General Session

**79-2-504 Program creation -- Administration.**

- (1) There is created the Sage Grouse Compensatory Mitigation Program to mitigate the impacts of development or disturbance of sage grouse habitat by:
- (a) creating and preserving habitat for the long-term conservation of sage grouse in the state in a manner that minimizes impacts to economic growth;
  - (b) establishing a mechanism by which conservation banks may operate in Utah to achieve compensatory mitigation; and
  - (c) establishing a mechanism by which a person or a governmental entity may voluntarily complete compensatory mitigation.
- (2)
- (a) The department shall administer the program and may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the program in accordance with the provisions of this part.
  - (b) A rule made under Subsection (2)(a) shall be consistent with:
    - (i) the requirements of Section 79-2-505;
    - (ii) the goals and objectives described in the conservation plan, including avoiding and minimizing habitat disturbances and mitigation impacts to sage grouse habitat; and
    - (iii) to the greatest extent possible, any local programs for the conservation of sage grouse habitat.
  - (c) Before making any rules under this chapter, the department shall:
    - (i) create a plan by which the requirements of this chapter will be met; and
    - (ii) before November 1, 2016, present the plan to the Natural Resources, Agriculture, and Environment Interim Committee.

Enacted by Chapter 358, 2016 General Session

**79-2-505 Department duties.**

- (1) In administering the program created in Section 79-2-504, the department shall:
- (a) create a system through which:
    - (i) a person may:

- (A) generate a mitigation credit from the department if the person creates a conservation bank by enhancing and dedicating land for sage grouse habitat and conservation; and
  - (B) sell a mitigation credit generated under Subsection (1)(a)(i)(A) to another person that permanently disturbs sage grouse habitat;
  - (ii) the state may generate a mitigation credit by enhancing and dedicating land for sage grouse habitat and conservation;
  - (iii) a person may purchase a mitigation credit generated by the state under Subsection (1)(a)(ii) for no less than the state's total cost of enhancing and dedicating the land; and
  - (iv) a person may use a mitigation credit to permanently disturb sage grouse habitat to the extent that the person possesses sufficient mitigation credits;
  - (b) create a system for tracking mitigation credits that are created, purchased, sold, or used under Subsection (1);
  - (c) establish procedures and criteria to identify and approve land that a person or a governmental entity may use for compensatory mitigation; and
  - (d) consistent with this chapter, integrate and coordinate the program with other state, local, private, and non-profit plans to protect and manage sage grouse habitat.
- (2) The state's total cost described under Subsection (1)(a)(iii) may include costs associated with the department's administration of the program.

Enacted by Chapter 358, 2016 General Session